

Translator's note: Pages 1 and 2 are cover letters, please see original document.

Translation of report:

From: Finnish Ministry of the Environment

Date: 25 April 2013

### **Report to the Commission under Article 18 of the Environmental Liability Directive**

Under Article 18(1) of Directive 2004/35/EC of the European Parliament and of the Council on environmental liability with regard to the prevention and remedying of environmental damage ('the Environmental Liability Directive'), Member States must report to the Commission on the experience gained in the application of the Directive by 30 April 2013. The reports shall include the information and data set out in Annex VI.

The European Commission has prepared guidelines on reporting which are not binding on Member States and include part A of Annex II to the Directive, which is mandatory, and part B, which is supplementary and non-mandatory. When producing this report, Finland made use of the Commission guidelines.

To fulfil the reporting requirement under the Directive in Finland, the Ministry of the Environment commissioned a report from the Finnish Environment Institute on 22 March 2012, concerning environmental accidents and damage to nature in Finland in the period 2006-2011. Its purpose was to collect data on damage to nature and the environment, and its economic impact on Finland in the period 2006-2011 in light of the revision of the secondary liability mechanisms and to comply with the reporting requirement under the EU Environmental Liability Directive.

As part of the report, the Finnish Environment Institute sent an enquiry to the competent authorities in December 2012 concerning implementation of the Directive. It asked authorities to send data on any significant environmental accidents in the period 2006-2012. Telephone interviews were also used to gather additional information. Other sources of information used by the Environment Institute include the Institute's own environmental accident helpline, the alert and accident listings used for accidents involving hazardous substances in the PRONTO data system used by rescue services, the VARO register maintained by the Safety Technology Authority, and media monitoring of events.

On 19 March 2013, the Environment Institute sent the Ministry of the Environment the information on accidents in Finland in the period 2006-2012 referred to in the Directive. The complete environmental accident report will be ready later in the spring of 2013 and the report will be published in the publications series of Finland's environmental administration. Based on the report produced by the Finnish Environment Institute and the Commission's guidelines, the Ministry of the Environment has compiled a report on experience gained in the application of the Directive in Finland.

#### **Mandatory section**

*1. Type of environmental damage, date of occurrence and/or discovery of the damage and date on which proceedings were initiated under this Directive.*

**Incident 1:** In 2010-2011 (*date of incident*), the mining firm Mawson Ltd took soil samples in the Romppaat and Mustiaapa-Kaattasjärvi Natura 2000 areas in Lapland in a manner that caused damage to protected species and natural habitats (*type of environmental damage*) referred to in the Directive. The authorities, in this case the forestry authority Metsähallitus and the ELY Centre of Lapland, did not learn of the unauthorised soil and rock samples and excavations until November 2011 (*date of discovery*). The ELY Centre of Lapland is the competent authority under the Directive with regard to damage to protected species and habitats.

In the summer and autumn of 2012, Metsähallitus made an inventory of species protected under Natura (mainly the calypso orchid and *Cypripedium calceolus*) and concluded that the firm had damaged 160 occurrences of calypso orchids by sampling. It is estimated that 117 hectares of the protected boreal natural forest in the area has been damaged. Measures under the Directive to compensate for the damage began on 25 April 2013.

**Incident 2:** Between 4-15 November 2012 (*date of incident*), over 200 000 m<sup>3</sup> of waste water leaked into the lower water system from the gypsum layer of the Talvivaara mine. The operator notified the Kainuu ELY Centre of the leak by telephone on Sunday, 4 November 2012 at 8.50 am (*date of discovery*). The most significant effects of the waste water emissions were on surface water, so this is a case of water damage (*type of environmental damage*) under the Directive. There was also damage to the soil, but initial assessment indicates that this damage does not pose any significant risk, as per the Directive, that waste water entering the soil would adversely affect human health. The ELY Centre of Kainuu is the competent authority under the Directive with regard to water damage.

When the accident occurred, the operator immediately took steps to limit the damage. The leak was localised and efforts to stop it began as soon it was found. The leaked water was neutralised, using lime, etc. On 21 December 2012 the operator sent the competent authority an application to clean the area between the dam at Kortelammi and Ylä-Lumijärvi lake and to temporarily store the soil due to be removed, and on 28 December 2012 it sent a plan to repair the section of Lumijoki lake. On 21 January 2013, the competent authority issued its decision approving these measures, after which the first measures to remedy the damage were taken. The competent authority and the operators have agreed on a research programme for sediments and on expert assessments of the effects of the leak on the state of water systems and a report on potential methods of returning the water to its previous state. In addition, the operator has agreed to investigate the effects on groundwater of the leak and storage of water.

A new leak was discovered in the second section of the gypsum layer of Talvivaara between 7 and 9 April 2013. The leaking water was diverted into safety reservoirs and no untreated waste water escaped into the water system.

## *2. Activity classification code of the liable legal person(s).*

**Incident 1:** Mining operations (other than occupational activities listed in Annex III to the Directive)

**Incident 2:** Mining operations and metal industry (part of the operations referred to in sections 1, 3 and 5 of Annex III to the Directive)

## *3. Whether there has been resort to judicial review proceedings either by liable parties or qualified entities. (The type of claimants and the outcome of proceedings shall be specified.)*

**Incident 1:** As the competent authority has not yet decided on remedial measures, no resort to review proceedings has been made.

**Incident 2:** The competent authority has not yet issued a decision on all the measures necessary for remedying the damage to the water. An appeal against the competent authority's decision of 21 January 2013 concerning initial remedial measures has been made to the administrative court of Vaasa, and appeal proceedings are still under way.

On 25 April 2012, SOTE, the federation of municipalities of Ylä-Savo, submitted a claim for administrative enforcement to the ELY Centre of Kainuu concerning operations at the Talvivaara mine, requiring that remedial measures under the Environmental Liability Directive be imposed on the operator due to the emissions it had caused contrary to the environmental permit requirements. In its decision of 14 June 2012, the competent authority rejected this claim. The SOTE municipal federation of Ylä-Savo appealed against the decision to the administrative court of Vaasa, which on 8 March 2013 issued a ruling overturning the competent authority's decision and ordering that the case be re-examined in the appeal concerning the waste water leak of 4 November 2012.

#### *4. Outcome of the remediation process.*

**Incidents 1 and 2:** Remedial measures have not begun in either case, and the outcome of the remediation process is not yet known.

#### *5. Date of closure of proceedings.*

**Incidents 1 and 2:** The proceedings have not yet closed in either case.

## **Non-mandatory section**

### *1. Costs incurred with remediation and prevention measures, as defined in this Directive:*

- *paid for directly by liable parties, when this information is available;*
- *recovered ex post facto from liable parties;*
- *unrecovered from liable parties. (Reasons for non-recovery should be specified.)*

The small number of incidents and incompleteness of remedial measures mean that we cannot answer this question.

### *2. Results of the actions to promote and the implementation of the financial security instruments used in accordance with this Directive.*

Before the Directive was transposed into Finnish law, the Act on Environmental Damage Insurance (81/1998) was already in force. Private bodies whose operations entail a significant risk of environmental damage or whose operations generally cause harm to the environment must be insured against the risk of legally defined environmental damage. This insurance only partly covers damage falling within the scope of the Directive.

In its mandate from the Ministry of the Environment, the Environment Institute has produced a report on the development of the mandatory environmental liability insurance scheme (Reports by the Finnish Environmental Institute, 21/2011), which is available in electronic format: <http://www.ymparisto.fi/download.asp?contentid=132054&lan=fi>

### *3. An assessment of the additional administrative costs incurred annually by the public administration in setting up and operating the administrative structures needed to implement and enforce this Directive.*

Due to the paucity of experience gained in the application of the Directive, we cannot answer this question.